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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,498	09/02/2003	Randolf Von Oepen	31698-02080	2721
71040 7590 12/13/2007 LUCE, FORWARD, HAMILTON & SCRIPPS 11988 EL CAMINO REAL, SUITE 200 SAN DIEGO, CA 92130			EXAMINER PELLEGRINO, BRIAN E	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/652,498

Applicant(s)

VON OEPEN, RANDOLF

Examiner

Brian E. Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8, 10, 16 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10, 16 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 22-24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. These claims depend from a canceled claim (13). The claim sheet submitted 9/28/07 lists 11-15 as canceled.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3,8,16,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra et al. (EP 0779062) in view of Jaeger (DE 19509464). Glastra et al. show (Fig. 6) a stent-catheter arrangement having a balloon **26** with two fully expandable "essentially tubular" sections **27** and an "essentially tubular" section of reduced expandability between the expandable sections. The examiner is interpreting the claimed elements "essentially tubular" in this way: something that is in the form of a conduit having a hollow or cylindrical like cross-section. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054, 1055.

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However, Glastra does not disclose a liquid impermeable cover over the stent or a stiffening element for forming a reduced expandable section. Jaeger teaches (Fig. 11) a liquid impermeable cover 6 over stent. Jaeger also teaches (Fig. 3) an independent stiffening element 5 can be used to form a section of reduced expandability. It would have been obvious to one of ordinary skill in the art to use a blood impermeable cover on the stent and a stiffening element as taught by Jaeger with the stent-catheter system of Glastra et al. in order to provide an outer surface that does not allow blood leakage and to provide a throttle portion to increase blood flow to reduce the likelihood of plaque buildup. Please note claims 16,23,24 are being interpreted as product-by-process claims and are not construed as being limited to the product formed by the specific processes recited. The balloon of Glastra is fully capable of being made to incorporate the stiffening element with the balloon.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra (EP 0779062) in view of Jaeger (DE 19509464) as applied to claims 1-3 above, and further in view of Tower (US 5695498). Glastra in view of Jaeger is explained supra. However, Glastra as modified by Jaeger do not disclose the balloon made of stiffened balloon material. Tower discloses that the balloon is formed of stiffened balloon material and that the reduced expandability section is formed during balloon production, col. 3, lines 21-34. It would have been obvious to one of ordinary skill in the art to use stiffened balloon material and produce this reduce expandability section during balloon production as taught by Tower with the catheter-stent system of Glastra as modified by

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Jaeger in order to strengthen the balloon such that the chance of the balloon collapsing has been greatly reduced.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra (EP 0779062) in view of Jaeger (DE 19509464) as applied to claim 2 above, and further in view of Ruiz (6120534). Glastra in view of Jaeger is explained supra. However, Glastra as modified by Jaeger do not disclose the covering on the stent is PTFE. Ruiz teaches (Figs. 5B,5C) a liquid impermeable cover **52** on the stent and that the covering is PTFE, col. 3, lines 40,41. It would have been obvious to one of ordinary skill in the art to use PTFE on the stent as taught by Ruiz with the stent catheter system of Glastra as modified by Jaeger such that it provides a well tolerated or biologically accepted material having good flexibility.


Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra (EP 0779062) in view of Jaeger (DE 19509464) as best understood and further in view of Crocker et al. (US 5843116). Glastra in view of Jaeger is explained supra. However, Glastra as modified by Jaeger fail to disclose the stiffening element is integrated in the balloon. Crocker et al. show (Fig. 3) that stiffening material is integrated into the balloon to limit the expansion of the balloon in certain areas, col. 5, lines 29-49. It would have been obvious to one of ordinary skill in the art to utilize the integrated stiffening material as taught by Crocker et al. with the balloon catheter of Glastra as modified by Jaeger having a stent such that a proper profile can be obtained by integrating the stiffening element in the balloon and provide the matching contour to the vessel site.

Response to Arguments

Applicant's arguments filed 9/28/07 have been fully considered but they are not persuasive. Applicant argues that the amendment to claim 1 overcomes the rejection of Glastra and Jaeger. However, the independent stiffening element applied to the stent in Jaeger device to reduce the expansion of the stent would also be applied to the balloon of Glastra since the stent is applied over the balloon. Thus, Applicant's amendment has not defined over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Friday from 9am to 5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738


BRIAN E. PELLEGRINO
PRIMARY EXAMINER